

Message

From: Wirick, Holiday [wirick.holiday@epa.gov]
Sent: 2/24/2022 8:05:43 PM
To: Todd, Andrew [Todd.Andrew@epa.gov]
Subject: FYI antideg question from ND

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Hi Andrew, just keeping you in the loop on this issue.

Pete Wax from ND DEQ sent me the question below. I called him to get more details which he provided, and I summarize in the background below. I shared this information with Dave and George (per Dave's recommendation) and I'm setting up a call with Pete, Dave and George next week to discuss.

Pete's question:

Can a private discharger request a change to the standards under 40 CFR 131.10(g)? My personal believe is that antidegradation and the 131.10(g) is not designed as an off ramp.

The 1995 Interim Guidance specifically addresses economic impacts for private entities in Chapter 3. However the just released 2022 guidance only addresses public entities and notes that the 1995 is the most recent.

Background:

A large agricultural corporation in Enderlin, ND, is discharging chlorides and sulfates into the Maple River, a Class 3 stream. Pete said the chlorides aren't much of a problem, but the sulfate discharge, once run through the lagoon system, is between 1000 and 3000; ND's WQC is 750 mg/L.

The company hired a consultant to help them figure out how to address the problem, suggesting they take away the drinking water use criteria on the Maple River downstream of the discharge ('since there's nobody using it'), and recalculating the aquatic life criteria. The consultant provided ND some examples in IA and UT where they've done that in certain locations and came up with sulfate numbers in the 2000-3000 range.

Pete's main question is whether he is under any obligation to honor that request. He asked is it a reasonable or an accepted process that if an industry says 'we have a substantial economic reason for doing this,' as the primacy holders of the WQS, are they obligated in some way to respond to their concerns? Or can DEQ just say "no, it's an existing use, we'll put you on a compliance schedule..., but you're a million dollar entity and should be able to figure out something to do with your pollution"?

Pete says at 2000 mg/L, which is what they're shooting for, at the biological low flow timeframe (which is what ND uses), they could be looking at numbers in the 2000-3000 range, which could kill off livestock due to brain swelling and copper deficiency.

Pete said the consulting firm did a good job looking at the data and did the correct calculations, but when you have that type of stream in ND in the wintertime, the base flow of zero or less than the cfs, and there's no room for aeration or anything, so once you put something in there it stays in there at that concentration for many miles. It doesn't just impact the short distance downstream; at 100 miles away you can still follow it. So it's a giant impact and it needs to be addressed.